

JOHN HOWE.

[To accompany bill H. R. No. 32.]

FEBRUARY 29, 1840.

Mr. RUSSELL, from the Committee of Claims, submitted the following

## REPORT :

*The Committee of Claims, to whom was referred the petition of John Howe, make the following report :*

At the 3d session of the 25th Congress this claim was referred, in the House of Representatives, to the Committee of Claims, and a favorable report made thereon, with a bill for the petitioner's relief; which passed the House, and was sent to the Senate for their concurrence, and was there referred to the Committee of Claims, which, on the 1st day of March, 1839, made a verbal report to the Senate, of the bill, without amendment, and that said bill ought not to pass; but no further action appears to have been had thereon. Under these circumstances, the committee have again reviewed the claim, and the report made thereon by the Committee of Claims in the House of Representatives, but have not been able to discover any sufficient reason for departing from the report made thereon in the House of Representatives; and though this committee hold in high estimation the opinions of the Committee of Claims in the Senate, they cannot, out of mere respect to the opinion of that committee, abandon an opinion carefully and deliberately formed by themselves; and more especially in this case, where they find the principle involved has been repeatedly and solemnly sanctioned by the House of Representatives, by the Committee of Claims in the Senate, and by the Senate itself.

This claim falls within the principle upon which the law for the relief of Jesse Smith and others was passed on the 14th day of June, 1836. That bill originated in the House of Representatives, and, in the Senate, was referred to the Committee of Claims; which, on the 17th March, 1836, reported the same to the Senate without amendment, and it was then passed into a law. The claim of Chauncey Calhoun involved the same principle; the bill in this last case also originated in the House of Representatives, and passed that body on the 2d day of February, 1839, and was sent to the Senate for their concurrence; which was referred there to the Committee of Claims, and by their chairman was reported to the Senate, without amendment, on the 28th day of February; and, on the 3d day of March, 1839, was passed in Committee of the Whole, and on the same day passed that body. Several other cases involving the same principle have passed into laws; and before the committee withhold their sanction from this claim, they desire to be advised of reasons which they shall deem satisfactory, other than the bare declaration "that the bill ought not to pass."

With these views, the committee have adopted the former report made to the House of Representatives as a part of this report; and herewith report a bill.

JANUARY 17, 1839.

*The Committee of Claims, to whom was referred the petition of John Howe, of Ellisburg, Jefferson county, New York, report:*

The petitioner alleges that, in each of the winters of 1815, 1816, and 1817, a detachment of United States soldiers was stationed, for short periods each winter, at the village of Antwerp and vicinity, in the county of Jefferson, to aid the collector at Sackett's Harbor in enforcing the revenue laws, and were detailed for that service from the 2d regiment of infantry, then stationed at Sackett's Harbor; that, during each year, he had accounts against the United States for the transportation of the troops, or their baggage or stores, and for rent of their quarters, &c.; and that when the detachment was withdrawn, (in the spring of 1815 and 1816,) Thomas Tupper, who was then assistant deputy quartermaster general, came to Antwerp and liquidated his accounts, and took them receipted, and promised to send back the amounts by the teamsters who carried the troops to Sackett's Harbor; that a detachment, under command of Major Gray, was stationed at Antwerp, and the Quaker settlement near, during January and February, and part of March; and that accounts accrued to the petitioner during that time for transportation, team-work, and rent of quarters, amounting to two hundred and forty-seven dollars; that the team-work or transportation was done, and the quarters furnished at the request and under the direction of Major Gray, the commanding officer; that, in the latter part of March, when said detachment was removed, Captain Tupper came to Antwerp to settle the accounts, and the petitioner presented his, certified by Major Gray, and liquidated and agreed to by said Tupper, who requested the petitioner to sign duplicate receipts for said accounts, saying he would send back the money by the teamster who carried the troops and baggage to Sackett's Harbor; and supposing he would send back the money, as he had frequently done before, he signed and delivered duplicate receipts for the accounts, copies of which are annexed to the petition. The petitioner further states that said Tupper did not send back the money, and he soon afterwards called upon him for it; and he stated that he had no money by him, but that he had Government funds to his credit in the Utica bank, and that he would give the petitioner a check on said bank for the amount of his accounts, which he accordingly did some time in May, 1817; that said check was in the ordinary form, was signed by said Tupper in his official capacity, and bore date on the day it was given; that immediately, and with all due diligence, he presented the same for payment at the Utica bank, and that payment was refused, and the check protested for non-payment, and notice given to said Tupper. And the petitioner says that the said check has not been paid to him, nor have his said accounts, or either or any part thereof, directly or indirectly; and that the whole amount thereof is justly due to him. He further states, that some years ago he delivered the check, together with the certificate of protest, to Egbert Ten Eyck, Esq., then a member of Congress, that the same might be presented at the proper department, or urged before Congress, and that the said Ten Eyck has lost the same.

And he further says that, when he signed the said receipts upon said accounts, he did it because he was informed by said Tupper that it was necessary and proper, and as a matter of form, and in pursuance of his practice, as set forth in the petition. And he prays for relief.

The Third Auditor, to whom the petition was enclosed, writes: "It is found that said Tupper claimed and received credit with the United States on the original accounts receipted by Mr. Howe, of which Nos. 1 to 4, accompanying the petition, are copies. The accounts appear to be of a description of a large number predicated upon due-bills or obligations given by Thomas Tupper, and which have been decided by the accounting officers to be inadmissible as charges against the United States." "By the act of June 14th, 1836, 'for the relief of Jesse Smith and others,' Congress directed the allowance of a portion of the claims to be admitted as a set-off," &c.; and he refers to the report upon which that bill was founded.

The facts set forth in the petition, so far as they relate to the acts and doings of said Tupper, are proved by said Tupper in his deposition, taken May 3d, 1837, and annexed to the petition. The petition is also verified by the oath of the petitioner.

The first account is for forty-four dollars, for services with teams in transporting provisions from Sackett's Harbor to Antwerp.

The second is for one hundred and sixty-one dollars, for labor, &c., at Antwerp.

The third is for twenty-four dollars, for rent of the building occupied as quarters for the detachment.

The fourth account is for rent of Major Gray's quarters, and is \$18.

All the accounts are certified by Robert Gray, brevet major 2d infantry, to be correct, &c.; and they are all receipted by the petitioner.

The facts stated in the petition, with regard to the delivery of the check and notarial certificate to Egbert Ten Eyck, Esq., and their loss, are supported by his deposition.

This case appears to come clearly within the principles upon which the act entitled "An act for the relief of Jesse Smith and others," passed June 14th, 1836, was grounded, as set forth in report No. 202, 1st session 23d Congress, and in report No. 8, 1st session 24th Congress, to which the committee refer. Several of the drafts, for the settlement of which provision was made in that act, were made in March, 1817, and with a representation on the part of said Tupper that funds were deposited to meet them, or would be provided for their payment at maturity. It is proved that the accounts of the petitioner are correct, and were regularly settled. Their settlement was within the scope of the authority of said Tupper, in his official capacity. He drew his check and signed it officially, and as agent of the United States; and credit was given to it as an official act, and not as his private act. His personal security was not taken by the petitioner. The receipt of the accounts is not conclusive evidence of payment, but may be explained. The accounts have not been paid, there having been no funds subject to the draft of said Tupper at the time he drew the check. The money is still justly due from the United States. But it is not necessary to enlarge, as the whole subject has been fully, repeatedly, and most elaborately examined in the reports to which reference has been made.

The committee are of opinion that provision ought to be made for the relief of the petitioner; and, accordingly, report a bill for the payment of two hundred and forty-seven dollars, the amount of his accounts.

